



DOCKET NO. CDS0226USDIV4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Thomas J. Cummins et al.

Serial No.: 09/675,828

Art Unit: 1637

Filed : September 29, 2000

Examiner: T.E. Strzelecka

For : Diagnostic Compositions, Elements, Methods and
Test Kits For Amplification and Detection of Two
or More DNA's Using Primers Having Matched
Melting Temperatures

I hereby certify that this correspondence is being deposited with the
United States Postal Service as first class mail in an envelope addressed
to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

January 28, 2005
(Date of Deposit)

Catherine Kurtz Gowen
(Name of applicant, assignee, or Registered Representative)

/s/ Catherine Kurtz Gowen

(Signature)

January 28, 2005
(Date of Signature)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE

Dear Sir:

This paper is submitted in response to the Office Action dated October 19, 2004, the three-month date for response to which was January 19, 2005. This response is filed with a Petition and Fee for an Extension of Time for a period of one (1) month. With this Extension of Time, the response will be due on February 19, 2005, which is within the six-month statutory period.

Claims 28, 29, 33 and 36-40 are pending in the application and have been rejected. The Examiner indicates that Applicants previous amendments overcame the rejection of claims 37-40 under 35 USC 112, second paragraph. The Examiner also indicates the declaration under 37 CFR 1.131 previously filed was sufficient to overcome the Frank et al. reference and the Frank et al. and Picone et al. references.

Claims 28, 29, 33 and 36-40 were rejected under obviousness-type double patenting as unpatentable over claims 18 and 19 of US Patent No. 6,709,813. As this US Patent is commonly owned with the instant application, Applicants herein submit a Terminal Disclaimer in compliance with 37 CFR 1.321(c) to overcome this rejection. Applicants herein provide copies of the Assignments filed by the common Assignee hereto for US Patent 6,709,813 and the instant USSN 09/675,828.

The Examiner has stated that claims 28, 29, 33 and 36-40 are free of prior art and rejected for the reasons of obviousness-type double patenting.

With submission of this Terminal Disclaimer and the supporting copies of Assignments, withdrawal of the rejection is courteously requested and Applicants request that this application proceed to allowance.

Appl. No. 09/675,828
Response dated January 28, 2005
Reply to Office Action of October 19, 2004

Authorization is hereby given to charge the fees due in connection with the filing of this Terminal Disclaimer and the Petition for Extension of Time submitted herewith to Deposit Account No.10-0750/CDS0226USDIV/CKG in the name of Johnson & Johnson.

Respectfully submitted,

/s/ Catherine Kurtz Gowen

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